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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 762

[Docket No. 200211-0051]

RIN 0694-AH97

Temporary General License: Extension of Validity

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Government has decided to extend through April 1, 2020, the temporary general license to Huawei Technologies Co., Ltd. (Huawei) and one hundred and fourteen of its non-U.S. affiliates on the Entity List. In order to implement this decision, this final rule revises the temporary general license to remove the expiration date of February 16, 2020, and substitute the date of April 1, 2020.

DATES: This rule is effective [INSERT DATE OF DISPLAY ON THE PUBLIC INSPECTION LIST], through April 1, 2020, except for amendatory instructions 1 and 3, which are effective [INSERT DATE OF DISPLAY ON THE PUBLIC INSPECTION LIST].

FOR FURTHER INFORMATION CONTACT: Director, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, Phone: (949) 660-0144 or (408) 998-8806 or e-mail your inquiry to: ECDOEXS@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

As published on May 22, 2019 (84 FR 23468) and extended and amended through a final rule published on August 21, 2019 (84 FR 43487), this temporary general license authorizes certain activities, including those necessary for the continued operations of existing networks and equipment as well as the support of existing mobile services, including cybersecurity research critical to maintaining the integrity and reliability of existing and fully operational networks and equipment. Exporters, reexporters, and transferors are required to maintain certifications and other records, to be made available when requested by BIS, regarding their use of the temporary general license. The expiration date was again updated through February 16, 2020 (84 FR 64018, Nov. 20, 2019).

As published on May 22, 2019 (84 FR 22961), and as revised and clarified by a final rule published on August 21, 2019 (84 FR 43493), any exports, reexports, or in-country transfers of items subject to the EAR to any of the listed Huawei entities as of the effective date they were added to the Entity List continue to require a license, with the

exception of transactions explicitly authorized by the temporary general license and eligible for export, reexport, or transfer (in-country) prior to May 16, 2019 without a license or under a license exception. License applications will continue to be reviewed under a presumption of denial, as stated in the Entity List entries for the listed Huawei entities. No persons are relieved of other obligations under the EAR, including but not limited to licensing requirements to the People's Republic of China (PRC or China) or other destinations and the requirements of part 744 of the EAR. The temporary general license also does not authorize any activities or transactions involving Country Group E countries (*i.e.*, Cuba, Iran, North Korea, Sudan, and Syria) or foreign nationals.

Extension of validity

At this time, the U.S. Government has decided to extend the temporary general license until April 1, 2020. In order to implement this U.S. Government decision, this final rule revises the temporary general license to remove the date of February 16, 2020 and substitute the date of April 1, 2020 in the introductory text in paragraph (b)(1) of the temporary general license and in the introductory text of paragraph (c) of Supplement No. 7 to part 744.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801-4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (previously, 50 U.S.C. 4601 et seq.) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)) or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of

Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 744 and 762 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 83 FR 49633 (September 20, 2019); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

2. Supplement No. 7 to part 744 is added to read as follows:

Supplement No. 7 to Part 744—Temporary General License

Notwithstanding the requirements and other provisions of Supplement No. 4 to this part, which became effective as to Huawei Technologies Co., Ltd. (Huawei), Shenzhen, Guangdong, China on May 16, 2019, and its non-U.S. affiliates listed in Supplement No. 4 to this part on, as applicable, May 16, 2019 or August 19, 2019, the licensing and other requirements in the EAR as of May 15, 2019, are restored in part as of May 20, 2019, and through April 1, 2020, pertaining to exports, reexports, and transfers (in-country) of items subject to the EAR to any of the listed Huawei entities. The licensing and other policies of the EAR that were in effect as of May 15, 2019, are available to export, reexport, or transfer (in-country) such items to the listed Huawei entities if the transaction meets the conditions of paragraph (b) of this supplement, is limited in scope to one or more of the activities described in paragraphs (c)(1) through (3) of this supplement, and if the transaction parties satisfy the requirements of paragraph (d)(1) of this supplement and, if applicable, paragraph (d)(2) of this supplement. Thus, for example, the authority of NLR or a License Exception that was available as of May 15, 2019, may be used in connection with a transaction as per this temporary general license.

(a) *Identification of non-U.S. affiliates.* The non-U.S. affiliates to whom the licensing and other requirements of the EAR are restored as described herein are those Huawei entities and affiliates added to the Entity List through the Federal Register documents listed in paragraphs (a)(1) and (2) of this supplement:

- (1) Addition of Entities to the Entity List, published on 5/21/19.

(2) Non-U.S. affiliates of Huawei added to the Entity List on August 19, 2019.

(b) *Conditions for use of temporary general license.* Use of this temporary general license is subject to the following conditions:

(1) This temporary general license is effective from May 20, 2019, through April 1, 2020.

(2) This temporary general license does not resolve persons of other obligations under the EAR, including but not limited to licensing requirements to the People's Republic of China or elsewhere and/or the requirements of part 744 of the EAR. This authorization does not authorize any activities or transactions involving Country Group E countries (i.e., Cuba, Iran, North Korea, Sudan and Syria) or persons.

(3) With the exception of those explicitly authorized in this temporary general license, exports, reexports, transfers (in-country) continue to require a license pursuant to the licensing policy described on the Entity List and license applications will be reviewed under the license review policy for that entry.

(c) *Authorized transactions.* This temporary general license allows, from May 20, 2019, through April 1, 2020, the following:

(1) *Continued operation of existing networks and equipment.* BIS authorizes, subject to other provisions of the EAR, engagement in transactions necessary to maintain and support existing and currently 'fully operational network' and equipment, including software for bug fixes, security vulnerability patches, and other changes to existing versions of the software, subject to legally binding contracts and agreements executed between Huawei, or one of its listed non-U.S. affiliates, and 'third parties' on or before

May 16, 2019. Such transactions may not enhance the functional capacities of the original software or equipment.

(i) *Exclusions.* (A) The authorization under paragraph (c)(1) of this supplement extends only to activities such as patching networks and network infrastructure equipment, not end-devices such as general-purpose computing devices that would not be considered to be part of an existing and 'fully operational network.' Paragraph (c)(1) of this supplement does not authorize support for equipment that is not directly related to the support and maintenance of the network.

(B) The provision of the temporary general license under paragraph (c)(1) of this supplement does not authorize transfers of equipment for general business purposes or for activities that are not in direct support of an existing and 'fully operational network' (e.g., semiconductor production equipment).

(ii) [Reserved]

Note 1 to paragraph (c)(1): The term 'third parties' in paragraph (c)(1) of this supplement and the term 'third party' in Notes 2 and 3 to paragraph (c)(1) refer to a party that is not Huawei, one of its listed non-U.S. affiliates, or the exporter, reexporter, or transferor, but rather an organization such as a telecommunications service provider.

Note 2 to paragraph (c)(1): The term 'fully operational network' in paragraph (c)(1) of this supplement, as well as in paragraph (c)(3) of the supplement, refers to a 'third party' network providing services to the 'third party's' customers.

(2) *Support to existing 'personal consumer electronic devices' and 'Customer Premises Equipment (CPE).'* BIS authorizes, subject to other provisions of the EAR, engagement in transactions necessary to provide service and support, including software

for bug fixes, security vulnerability patches, and other changes to existing versions of the software, to existing Huawei 'personal consumer electronic devices.' Such transactions may not enhance the functional capacities of the original software or equipment. For the purposes of this paragraph (c)(2), the term 'personal consumer electronic devices' is defined as including phones and other personally-owned equipment, such as a tablets, smart watches, and mobile hotspots such as MiFi devices. The authorized transactions under this paragraph (c)(2) include support for personal use of telecommunications hardware known as 'Customer Premises Equipment (CPE),' such as network switches, residential internet gateways, set-top boxes, home networking adapters and other personally-owned equipment that enables consumers to access network communications services and distribute them within their residence or small business. The authorization conferred by this paragraph (c)(2) is limited to models of Huawei 'personal consumer electronic devices' and 'CPE' that were available to the public on or before May 16, 2019.

(3) *Cybersecurity research and vulnerability disclosure.* BIS authorizes, subject to other provisions of the EAR, the disclosure to Huawei and/or to its listed non-U.S. affiliates of information regarding security vulnerabilities in items owned, possessed, or controlled by Huawei or any of its non-U.S. affiliates when related to the process of providing ongoing security research critical to maintaining the integrity and reliability of existing and currently 'fully operational network' and equipment.

(d) *Certification statement.* Prior to making an export, reexport, or transfer (in-country) pursuant to the temporary general license, the exporter, reexporter, or transferor must obtain a certification statement and any additional support documentation needed to

substantiate the certification statement from the listed Huawei entity that will receive the item(s), as specified in paragraph (d)(1) of this supplement.

(1) *Certification statement required from Huawei or one of its listed non-U.S. affiliates.* Prior to any export, reexport, or transfer (in-country) under the temporary general license to Huawei or any of its listed non-U.S. affiliates identified in paragraph (a) of this supplement, the exporter, reexporter, or transferor must obtain a certification statement from the entity that will receive the item(s). The temporary general license also requires the party exporting, reexporting, or transferring (in-country) an item “subject to the EAR” to obtain, from the listed Huawei entity receiving the item, a certification statement under paragraph (d) of this supplement specifying how the export, reexport, or in-country transfer satisfies the provisions of the temporary general license, including specifying whether the activity or activities that will be supported by the transaction fall within paragraph (c)(1), (2), or (3) of this supplement. In order to substantiate the certification statement for transactions that fall within paragraph (c)(1), the exporter, reexporter, or transferor must obtain documentation from Huawei or one of its listed non-U.S. affiliates showing that there was a legally binding contract or agreement executed between the listed Huawei entity and a 'third party' on or before May 16, 2019. The exporter, reexporter, or transferor and the listed Huawei entity are each responsible for retaining the certification statement and any additional support documentation needed to substantiate the certification statement under paragraph (d). See part 762 of the EAR for record retention requirements. The certification statement must be in writing (which may be conveyed by email), be signed and dated by an individual of sufficient authority to legally bind the listed entity, and shall provide the information required in paragraphs

(d)(1)(i) and (ii) of this supplement and the certifications specified in paragraphs (d)(1)(iii) through (v) of this supplement.

(i) Name of the entity; complete physical address, to include shipping, corporate, and end user addresses, if different (simply listing a post office box is insufficient); telephone number; email address; website (if available); and name and title of individual signing the certification statement;

(ii) A complete list of the item(s), including the applicable Export Control Classification Number(s) or designation (if EAR99) for the item(s) under the EAR, and (for tangible shipments of commodities and software) the quantity or quantities of the item(s) that will be exported, reexported, or transferred under the authority of the temporary general license (this inclusive list may cover multiple exports, reexports, or transfers (in-country) under the temporary general license of the same item(s); see paragraph (d)(2) of this supplement);

(iii) The end-use of the item(s) to be received as an export, reexport, or transfer (in-country) falls within the scope of a specified authorizing paragraph under paragraph (c) of this supplement (a general statement or declaration that the item falls within the scope of paragraph (c) or the scope of the temporary general license will not be sufficient, as the specific authorizing paragraph under paragraph (c) must be identified);

(iv) The entity will comply with the recordkeeping requirements in part 762 of the EAR, including by providing copies of the certification statement and all other export, reexport, or transfer (in-country) records required to be retained in part 762 to any authorized agent, official, or employee of BIS, the U.S. Customs Service, or any other agency of the U.S. Government as required in §762.7 of the EAR; and

(v) The individual signing the certification statement, on behalf of the consignee identified in paragraph (a) of this supplement, has sufficient authority to legally bind the entity.

(2) *Certification statements may be used for multiple exports, reexports, and transfers (in-country).* Exporters, reexporters, and transferors may rely on the certification statements obtained under paragraph (d)(1) of this supplement for multiple exports, reexports, and transfers (in-country) involving the same item(s) to the same consignee/end-user, provided the information included remains accurate for those additional exports, reexports, and transfers (in-country). If one certification statement is used for multiple exports, reexports, or transfers (in-country) made pursuant to the temporary general license, the exporter, reexporter, and transferor must maintain a log or other similar record that identifies each such export, reexport, and transfer (in-country) against that specific certification statement. The log or other similar record must be retained in accordance with part 762 of the EAR.

PART 762—[AMENDED]

3. The authority citation for part 762 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*;
E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

4. Section 762.2 is amended by adding paragraph (b)(55) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(55) Supplement No. 7 to part 744, Temporary General License Certification
Statements and logs or other records required, including any additional support
documentation needed to substantiate the certification statement, under paragraph (d) of
Supplement 7 to part 744 of this chapter.

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Dated: February 12, 2020.

Richard E. Ashooh,

Assistant Secretary

for Export Administration.

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